

MICHIGAN DEPARTMENT OF TRANSPORTATION
TERMS AND CONDITIONS FOR
REAL ESTATE SERVICES

These Terms and Conditions for Real Estate Services set forth the standard requirements that govern Real Estate services contracts issued and administered by the Michigan Department of Transportation (MDOT).

1. Definitions

Contract Means the Real Estate services contract between MDOT and the Contractor.

Exhibit A Means Exhibit A of the Contract.

Services Means the professional work set forth in the Contract between MDOT and the Contractor.

2. Each Contract will define the scope of work, the effective date (on which the Contractor may begin work), the expiration date (on which the work must be completed), the maximum compensation for the work, and the basis of payment. The Contract will detail the specific services being ordered and describes and locates the individual ownership involved.
3. Contractor will not perform services that are not included in the Scope of Services or Exhibit A of the Contract. The Contractor acknowledges that MDOT employees, including any of MDOT's Region Real Estate Agents, do not have the authority to verbally assign work to the Contractor. In the event that any MDOT employee attempts to assign work under the Contract that is not included in the Scope of Services in Exhibit A, the Contractor will refuse to do any such work and will contact MDOT's Contract Administrator
4. The Contractor will perform all Services in conformity with MDOT's applicable standards, including these terms and conditions.
5. The Contractor will furnish all data, equipment, and materials not otherwise provided for the performance of the Services.

6. With regard to audits and record-keeping,
 - a. The Contractor will establish and maintain accurate records, in accordance with generally accepted accounting principles, of all expenses incurred for which payment is sought or made under the Contract (RECORDS). Separate accounts will be established and maintained for all costs incurred under the Contract.
 - b. The Contractor will maintain the RECORDS for at least three (3) years from the date of final payment made by MDOT under the Contract. In the event of a dispute with regard to the allowable expenses or any other issue under the Contract, the Contractor will thereafter continue to maintain the RECORDS at least until that dispute has been finally decided and the time for all available challenges or appeals of that decision has expired.
 - c. MDOT or its representative may inspect, scan, copy, or audit the RECORDS at any reasonable time after giving reasonable notice.
 - d. If any part of the work is subcontracted, the Contractor will assure compliance with subsections (a), (b), and (c) above for all subcontracted work.
7. The Contractor will have or obtain liability insurance in the form and in amounts acceptable to MDOT and will provide MDOT with evidence of said insurance. Said insurance must be in effect during the life of the Contract issued by MDOT, insuring all parties to this Contract against any and all claims that may arise out of the performance of this Contract. MDOT will be given thirty (30) days written notice before said insurance is altered or cancelled. Failure to maintain insurance as provided herein is a breach of this Contract.
8. The Contractor will provide for Workers' Compensation Insurance at the Contractor's own cost and expense. (Not required for one person companies.)
9. If MDOT discloses its confidential information to the Contractor, the Contractor will maintain such information as confidential. Information provided by MDOT will be deemed confidential if it is marked confidential or stated in writing to be confidential. The above obligations of confidentiality will not apply to:
 - a. Information for which MDOT gives prior written permission for publication or use.
 - b. Information that is required to be disclosed based on court order.

A violation of this provision will be considered a breach of the Contract, and MDOT may terminate the Contract under the provisions of Section 17(b).

News releases pertaining to the Contract or the Services to which it relates will not be made without prior written approval from MDOT, and then only in accordance with explicit instructions from MDOT. News releases made without MDOT's approval will be

considered a breach of the Contract, and MDOT may terminate the Contract under the provisions of Section 17(b).

10. The Contractor will Submit billings to MDOT for the performance of the Services as follows:
 - a. The billings for Services on a WORK ITEM basis will be in accordance with the WORK ITEM costs set forth in the RFP and as incorporated in the contract for such work.
 - b. Such billings will be submitted to MDOT within thirty (30) days of the end of any month in which the Contractor incurred costs except as follows: No billing will be in an amount less than \$1,000 unless it is a final billing; however, the Contractor will submit at least one billing at the end of each quarter year even if that billing is less than \$1,000. Billings are not to be submitted more frequently than once per month for this Contract. All such billings will be labeled sequentially by Progress Billing Number or labeled as Final Billing. The final billing must be for actual allowable costs incurred.
 - c. The billings for Services on a WORK ITEM basis will not be submitted more often than once per month for the contract. Each billing for Services will be submitted promptly, no more than sixty (60) days after the completion of the Services for that billing. All billings for Services provided prior to September 30 of any year must be received by MDOT prior to October 10 of that year or a significant delay in payment will occur.
 - d. The final billing for the Services must be received within sixty (60) days of completion of the Services. MDOT may close the Contract after the sixty (60) days have passed, and any costs due the Contractor may not be reimbursed until completion of the audit by MDOT. If an audit is not required, or if insufficient information is provided during the audit, the costs may be denied by MDOT.
 - e. The Contractor agrees that the costs reported to MDOT for this Contract will represent only those items that are properly chargeable in accordance with this Contract. The Contractor also hereby certifies that it has read the contract terms and has made itself aware of the applicable laws, regulations, and terms of this Contract that apply to the reporting of costs incurred under the terms of this Contract.
11. MDOT will provide the Contractor access to MDOT standards and information in its possession and related to the Services that the Contractor specifically requests, except for such standards and information as the Contractor is specifically required to provide for including any documents or information for work listed in the Contract.
12. MDOT will make payment to the Contractor in accordance with the following:

- a. Compensation for the Services will be on a unit price per unit of work basis.
 - b. Payments will be subject to audit and will be made no more frequently than once a month.
 - c. All payments made to the Contractor will contain the Contractor's escrow, commitment, or title reference number disclosed on the Contractor's title commitment or search forms provided to MDOT.
 - d. The Contractor will not be paid for costs attributable to correction of errors and omissions by the Contractor.
 - e. Reimbursement for costs incurred is subject to the cost criteria set forth in 48 CFR, Federal Acquisition Regulations, Part 31, incorporated herein by reference as if the same were repeated in full herein.
13. MDOT funds in the Contract made available through legislative appropriations are based on projected revenue estimates. MDOT may reduce the amount of the Contract if the revenue actually received is insufficient to support the appropriation under which the Contract is made.
 14. The parties will consider the Services to be complete when accepted by MDOT. Such acceptance by MDOT is not intended to nor does it relieve the Contractor of any of its obligations and responsibilities herein.
 15. Any change in the scope, character, or term of the Contract or in the maximum amount of the Contract will only be by award of a prior written amendment to the Contract by the parties. The maximum dollar amount of the Contract will not be increased without an accompanying and comparable increase in the Scope of Services.
 16. The Contractor's signature on the Contract constitutes the Contractor's specific agreement that all provisions of the Contract, including these Terms and Conditions, unless otherwise amended, are continued through any time period for which the Contract is extended by way of a time extension amendment. Any such extension will not operate as a waiver by MDOT of any of its rights herein set forth.
 17. MDOT may terminate the Contract for convenience or cause, as set forth below, before the Services are completed. Written notice of termination will be sent to the Contractor. The Contractor will be reimbursed in accordance with the following:

- a. **Termination for Convenience:**

If MDOT terminates the Contract for convenience, MDOT will give the Contractor written notice of such termination thirty (30) days prior to the date of such

termination, and the Contractor will be reimbursed for all costs incurred up to receipt of said Notice of Termination. Such reimbursement will be as set forth in Section 12. MDOT will receive the work product produced by the Contractor under the Contract up to the time of termination, prior to the Contractor being reimbursed. In no case will the compensation paid to the Contractor for partial completion of Services exceed the amount the Contractor would have received had the Services been completed.

b. **Termination for Cause:**

In the event the Contractor fails to complete any of the Services in a manner satisfactory to MDOT, and/or discloses MDOT's confidential information, in violation of the provisions of Section 9, and/or makes any public relations communications and/or products that are intended for an external audience without prior written approval from MDOT, as set forth in Section 44, MDOT may terminate the Contract for cause. Written notice of termination will be sent to the Contractor. The Contractor will be reimbursed as follows:

The Contractor will be reimbursed for Services completed up to receipt of said Notice of Termination. MDOT may pay a proportional share for the work product. The value of such partially completed work product will be determined by MDOT based on actual costs incurred up to the estimated value of the work product received by MDOT, as determined by MDOT. MDOT will receive the work product produced by the Contractor under the Contract up to the time of termination, prior to the Contractor being reimbursed. In no case will the compensation paid to the Contractor for partial completion of the Services exceed the amount the Contractor would have received had the Services been completed.

In the event that termination by MDOT is necessitated by any wrongful breach, failure, default, or omission by the Contractor, MDOT will be entitled to pursue whatever remedy is available to it, including, but not limited to, withholding funds or off-setting against funds owed to the Contractor under the Contract, as well as any other existing or future contracts between the Contractor and MDOT, for any and all damages and costs incurred or sustained by MDOT as a result of its termination of the Contract due to the wrongful breach, failure, default, or omission by the Contractor. In the event of termination of the Contract, MDOT may procure the professional Services from other sources and hold the Contractor responsible for any damages or excess costs occasioned thereby.

18. The Contractor specifically agrees that MDOT retains the right to audit the RECORDS of the Contractor. Any adjustments that result from any such audits are specifically limited to those costs incurred that are reimbursed on an actual cost basis.

In the event that an audit performed by or on behalf of MDOT indicates an adjustment to the costs reported under the Contract or questions the allowability of an item of expense, MDOT will promptly submit to the Contractor a Notice of Audit Results and a copy of the

audit report, which may supplement or modify any tentative findings verbally communicated to the Contractor at the completion of an audit.

Within sixty (60) days after the date of the Notice of Audit Results, the Contractor will (a) respond in writing to the responsible Bureau of MDOT indicating whether or not it concurs with the audit report, (b) clearly explain the nature and basis for any disagreement as to a disallowed item of expense, and (c) submit to MDOT a written explanation as to any questioned or no opinion expressed item of expense (RESPONSE). The RESPONSE will be clearly stated and will provide any supporting documentation necessary to resolve any disagreement or questioned or no opinion expressed item of expense. Where the documentation is voluminous, the Contractor may supply appropriate excerpts and make alternate arrangements to conveniently and reasonably make that documentation available for review by MDOT. The RESPONSE will refer to and apply the language of the contract. The Contractor agrees that failure to submit a RESPONSE within the sixty (60) day period constitutes agreement with any disallowance of an item of expense and authorizes MDOT to finally disallow any items of questioned or no opinion expressed cost.

MDOT will make its decision with regard to any Notice of Audit Results and RESPONSE within one hundred twenty (120) days after the date of the Notice of Audit Results. If MDOT determines that an overpayment has been made to the Contractor, the Contractor will repay that amount to MDOT or reach agreement with MDOT on a repayment schedule within thirty (30) days after the date of an invoice from MDOT. If the Contractor fails to repay the overpayment or reach agreement with MDOT on a repayment schedule within the thirty (30) day period, the Contractor agrees that MDOT will deduct all or a portion of the overpayment from any funds then or thereafter payable by MDOT to the Contractor under the Contract or any other agreement or payable to the Contractor under the terms of 1951 PA 51, as applicable. Interest will be assessed on any partial payments or repayment schedules based on the unpaid balance at the end of each month until the balance is paid in full. The assessment of interest will begin thirty (30) days from the date of the invoice. The rate of interest will be based on the Michigan Department of Treasury common cash funds interest earnings. The rate of interest will be reviewed annually by MDOT and adjusted as necessary based on the Michigan Department of Treasury common cash funds interest earnings. The Contractor expressly consents to this withholding or offsetting of funds under those circumstances, reserving the right to file a lawsuit in the Court of Claims to contest MDOT's decision only as to any item of expense the disallowance of which was disputed by the Contractor in a timely filed RESPONSE.

19. All questions that may arise as to the quality and acceptability of work, the manner of performance and rate of progress of the work, and the satisfactory and acceptable fulfillment of the terms of this Contract issued hereunder will be decided by MDOT.
20. The Contractor agrees to provide, and will require its subcontractors to provide, access by MDOT to all data, reports, documents, and work in process pertaining to any Contract herein provided for at any reasonable time.

21. All project documents prepared by the Contractor or borrowed from MDOT by the Contractor, including tracings, drawings, estimates, specifications, field notes, photographs, negatives, and investigative studies are the property of MDOT. All project documents will be returned to MDOT prior to the final payment being made. Restoration of lost or damaged documents will be at the Contractor's expense.
22. No portion of the Services, as herein defined, will be assigned. No portion of the Services, as herein defined, will be sublet, except with the prior written consent of MDOT and the FHWA. Consent to sublet any portion of the Services will not be construed to relieve the Contractor of any responsibility or obligation under or for the fulfillment of the Contract. All contracts, including amendments with subcontractors, in excess of Twenty Five Thousand Dollars (\$25,000.00) will be submitted to MDOT and the FHWA for approval prior to award and will contain all applicable provisions of the Contract. Any such approvals will not be construed as a warranty of the subcontractor's qualifications, professional standing, ability to perform the work being subcontracted, or financial integrity.
23. The Contractor agrees to pay each subcontractor for the satisfactory completion of work associated with the subcontract no later than ten (10) calendar days from the receipt of each payment the Contractor receives from MDOT. The Contractor agrees further to return retainage payments to each subcontractor within ten (10) calendar days after the subcontractor's work is satisfactorily completed. Any delay or postponement from these time frames may occur only upon receipt of written approval from MDOT. These requirements are also applicable to all sub-tier subcontractors and will be made a part of all subcontract agreements.

This prompt payment provision is a requirement of 49 CFR, Part 26, as amended, and does not confer third-party beneficiary right or other direct right to a subcontractor against MDOT. This provision applies to both Disadvantaged Business Enterprise (DBE) and non-DBE subcontractors.

The Contractor further agrees that it will comply with 49 CFR Part 26, as amended, and will report any and all DBE subcontractor payments to MDOT semi-annually in the format set forth in Appendix G, dated September 2015, attached hereto and made a part hereof, or any other format acceptable to MDOT.

24. With regard to non-discrimination and DBE requirements,
 - a. In connection with the performance of Services under the Contract, the Contractor (hereinafter in Appendix A referred to as the "contractor") agrees to comply with the State of Michigan provisions for "Prohibition of Discrimination in State Contracts" as set forth in Appendix A, dated June 2011, attached hereto and made a part hereof. This provision will be included in all subcontracts relating to the Contract.

- b. During the performance of the Contract, the Contractor, for itself, its assignees, and its successors in interest (hereinafter in Appendix B referred to as the “contractor”) agrees to comply with the Civil Rights Act of 1964, being P.L. 88-352, 78 Stat. 241, as amended, being Title 42 U.S.C. Sections 1971, 1975a-1975d, and 2000a-2000h-6, and the Regulations of the Department of Transportation (49 CFR Part 21) issued pursuant to said Act, including Appendix B, dated June 2011, attached hereto and made a part hereof. This provision will be included in all subcontracts relating to the Contract.
 - c. Contractor will carry out the applicable requirements of MDOT’s DBE program and 49 CFR, Part 26, including, but not limited to, those requirements set forth in Appendix C, dated October 2, 2014, attached hereto and made a part hereof.
25. Public Act 533 of 2004 requires that payments under the Contract be processed by electronic funds transfer (EFT). The Contractor is required to register to receive payments by EFT at the SIGMA Vendor Self Service (VSS) website (www.michigan.gov/SIGMAVSS).
26. The Contractor specifically agrees that in the performance of the Services herein enumerated, by itself, or by an approved subcontractor, or by anyone acting in its behalf, it will comply with any and all state, federal, and local statutes, ordinances, and regulations and will obtain all permits that are applicable to the entry into and the performance of the Contract.
27. In addition to the protection afforded by any policy of insurance, the Contractor agrees to indemnify, defend, and save harmless the State of Michigan, the Michigan State Transportation Commission, MDOT, the FHWA, and all officers, agents, and employees thereof:
- a. From any and all claims by persons, firms, or corporations for labor, services, materials, or supplies provided to the Contractor in connection with the Contractor’s performance of the Services, and
 - b. From any and all claims for injuries to or death of any and all persons, for loss of or damage to property, for environmental damage, degradation, response and cleanup costs, and for attorney fees and related costs arising out of, under, or by reason of the Contractor’s performance of the Services under the Contract, except claims resulting from the sole negligence or willful acts or omissions of said indemnitee, its agents, or its employees.

MDOT will not be subject to any obligations or liabilities by contractors of the Contractor or their subcontractors or any other person not a party to the contract without its specific consent and notwithstanding its concurrence with or approval of the award of any contract or subcontract or the solicitation thereof.

It is expressly understood and agreed that the Contractor will take no action or conduct that arises either directly or indirectly out of its obligations, responsibilities, and duties under the Contract that results in claims being asserted against or judgments being imposed against the State of Michigan, MDOT, the Michigan State Transportation Commission, and/or the FHWA, as applicable.

In the event that the same occurs, it will be considered as a breach of the Contract, thereby giving the State of Michigan, MDOT, the Michigan State Transportation Commission, and/or the FHWA, as applicable, a right to seek and obtain any necessary relief or remedy, including, but not limited to, a judgment for money damages.

28. The Contractor's signature on the Contract constitutes the Contractor's certification of "status" under penalty of perjury under the laws of the United States with respect to 49 CFR Part 29, as amended and as relocated to 2 CFR Part 1200, pursuant to Executive Order 12549.

The certification that is outlined as a part of these Terms and Conditions as Attachment A is Appendix A of 49 CFR Part 29 and applies to the Contractor (referred to in Appendix A as "the prospective primary participant").

The Contractor is responsible for obtaining the same certification from all subcontractors under the Contract by inserting the following paragraph in all subcontracts:

"The subcontractor's signature on this Contract constitutes the subcontractor's certification of 'status' under penalty of perjury under the laws of the United States with respect to 49 CFR Part 29, as amended and as relocated to 2 CFR Part 1200, pursuant to Executive Order 12549. The certification included as a part of this Contract as Attachment B is Appendix B of 49 CFR Part 29."

This certification is required of all subcontractors, testing laboratories, and other lower tier participants with which the Contractor enters into a written arrangement for the procurement of goods or services provided for in the Contract.

29. For contracts in excess of One Hundred Thousand Dollars (\$100,000.00):
 - a. The Contractor's signature on the Contract constitutes the Contractor's certification that to the best of his or her knowledge and belief no federal appropriated funds have been paid or will be paid by or on behalf of the undersigned to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, or the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.

- b. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the undersigned will complete and submit Standard Form LLL, "Disclosure Form to Report Lobbying," pursuant to Section 1352, Title 31 USC, in accordance with its instructions.
 - c. The Contractor will require that the language of this certification be included in the award documents for all third-party agreements (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients will certify and disclose accordingly.
 - d. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31 USC. Any person who fails to file the required certification will be subject to a civil penalty of not less than Ten Thousand Dollars (\$10,000.00) and not more than One Hundred Thousand Dollars (\$100,000.00) for each such failure.
30. In accordance with 1980 PA 278, MCL 423.321 et seq., the Contractor, in the performance of the Contract, will not enter into a contract with a subcontractor, manufacturer, or supplier listed in the register maintained by the United States Department of Labor of employers who have been found in contempt of court by a federal court of appeals on not less than three (3) occasions involving different violations during the preceding seven (7) years for failure to correct an unfair labor practice, as prohibited by Section 8 of Chapter 372 of the National Labor Relations Act, 29 USC 158. MDOT may void the Contract if the name of the Contractor or the name of a subcontractor, manufacturer, or supplier utilized by the Contractor in the performance of the Contract subsequently appears in the register during the performance of the Contract.
31. For contracts in excess of One Hundred Fifty Thousand Dollars (\$150,000.00):
- a. The Contractor stipulates that any facility to be utilized in the performance of the Contract, unless such Contract is exempt under the Clean Air Act, as amended (42 USC 7401 *et seq.*, as amended, including Pub. L. 101-549), and under the Clean Water Act, as amended (33 USC 1251 *et seq.*, as amended, including Pub. L. 100-4), and/or under Executive Order 11738 and regulations in implementation thereof (40 CFR Part 15), is not listed on the date of Contract award on the U.S. Environmental Protection Agency (EPA) List of Violating Facilities pursuant to 40 CFR Part 15.20.

- b. The Contractor agrees to comply with all the requirements of the Clean Air Act and the Clean Water Act and all regulations and guidelines listed thereunder related to the Contractor and the Services under the Contract.
 - c. The Contractor will promptly notify MDOT and the U.S. EPA, Assistant Administrator for Enforcement, of the receipt of any communication from the Director, Office of Federal Activities, EPA, indicating that a facility to be utilized for the Contract is under consideration to be listed on the EPA List of Violating Facilities.
 - d. The Contractor agrees to include or cause to be included the requirements of the preceding three (3) paragraphs, (a), (b), and (c), in every nonexempt subcontract.
32. The Contractor agrees that no otherwise qualified individuals with disabilities in the United States, as defined in the Americans with Disabilities Act, 42 USC 12101 *et seq.*, as amended, and regulations in implementation thereof (29 CFR Part 1630), will, solely by reason of their disabilities, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving benefits under the Contract.
33. The Contractor agrees that it will not volunteer, offer, or sell its services to any litigant against MDOT with respect to any Services it has agreed to perform for MDOT under the Contract, provided that this provision will not apply either when the Contractor is issued a valid subpoena to testify in a judicial or administrative proceeding or when the enforcement of this provision would cause the Contractor to be in violation of any Michigan or federal law.
34. Any approvals, reviews, or inspections of any nature by MDOT will not be construed as warranties or assumptions of liability on the part of MDOT. It is expressly understood and agreed that any such approvals are for the sole and exclusive purposes of MDOT, which is acting in a governmental capacity under the Contract, and that such approvals are a governmental function incidental to the Services under the Contract.
- Any approvals, reviews, or inspections by MDOT will not relieve the Contractor of its obligations hereunder, nor are such approvals, reviews, or inspections by MDOT to be construed as warranties as to the propriety of the Contractor's performance, but are undertaken for the sole use and information of MDOT.
35. With regard to claims based on goods or services that were used to meet the Contractor's obligation to MDOT under the Contract, the Contractor hereby irrevocably assigns its right to pursue any claims for relief or causes of action for damages sustained by the State of Michigan or MDOT due to any violation of 15 USC, Sections 1 - 15, and/or 1984 PA 274, MCL 445.771 - 445.788, excluding Section 4a, to the State of Michigan or MDOT.

The Contractor will require any subcontractors to irrevocably assign their rights to pursue any claims for relief or causes of action for damages sustained by the State of Michigan or MDOT with regard to claims based on goods or services that were used to meet the Contractor's obligation to MDOT under the Contract due to any violation of 15 USC, Sections 1 - 15, and/or 1984 PA 274, MCL 445.771 - 445.788, excluding Section 4a, to the State of Michigan or MDOT as a third-party beneficiary.

36. The Contractor will notify MDOT if it becomes aware that an antitrust violation with regard to claims based on goods or services that were used to meet the Contractor's obligation to MDOT under the Contract may have occurred or is threatened to occur. The Contractor will also notify MDOT if it becomes aware of any person's intent to commence, or of commencement of, an antitrust action with regard to claims based on goods or services
37. The Contractor warrants that it has not employed or retained any company or person, other than bonafide employees working solely for the Contractor, to solicit or secure the Contract and that it has not paid or agreed to pay any company or person, other than bonafide employees working solely for the Contractor, any fee, commission, percentage, brokerage fee, gifts, or any other consideration contingent upon or resulting from the award or making of the Contract. For breach or violation of this warranty, MDOT will have the right to void the Contract without liability and receive reimbursement for all compensation paid under the Contract or, at its discretion, to deduct from the contract compensation or otherwise recover the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.
38. The Contractor will not engage on a full-time, part-time, or other basis during the period of the Contract any professional or technical personnel who are in the employ of the FHWA or MDOT, except regularly retired employees, without the knowledge and consent of the employer of such person.
39. The parties agree that the Contractor and any agents and employees of the Contractor, in the performance of the Services under the Contract, will act in an independent capacity and are not officers or employees of the State of Michigan.
40. In addition, the Contractor agrees to provide consulting services and pretrial preparations, appear in court, give testimony, and attend conferences and meetings, if determined to be necessary, regarding the Services. The Contractor will be subject to the direction of MDOT and an Assistant Attorney General. The Contractor agrees that billings for the Services (if any) will be submitted upon a form to be supplied by MDOT detailing hourly itemized charges in accordance with the per hour rate authorized and the state standardized travel regulations.
41. The Contractor and MDOT mutually agree that while MDOT cannot, pursuant to Section 2164 of the Revised Judicature Act, promise in advance to pay the Contractor any sum in excess of Twelve Dollars (\$12.00) per day as witness fee, the Assistant Attorney handling the judicial proceedings will ask the court to permit it to pay the Contractor for such

appearance as a witness at the per hour rate for actual time of each court appearance, plus travel time and state standardized travel expenses, as authorized. The Contractor agrees to submit hourly itemized expenses upon a form supplied by MDOT.

42. The Contractor warrants that, as the responsible Contractor submitting proposals provided for the Contract, he/she has not, directly or indirectly, entered into any agreements, participated in any collusion, or otherwise taken any action in restraint of submitting an independent estimate of fees for this Contract.
43. The Contractor, during the performance of any Services herein provided for, is responsible for any loss or damage of documents belonging to MDOT while they are in its possession. Restoration of lost or damaged documents will be at the Contractor's expense.
44. Any public relations communications and/or products pertaining to the Contract or the Services hereunder that are intended for an external audience will not be made without prior written approval from MDOT, and then only in accordance with explicit instructions from MDOT. Examples of public relations communications and/or products may include the following:
 - a. Use of the MDOT logo;
 - b. Brochures, flyers, invitations, programs, or any other printed materials intended for an external audience;
 - c. Postings on social media sites or websites;
 - d. New or updated video, digital versatile disk (DVD), or video sharing productions;
 - e. Exhibits or presentations.

A violation of this provision constitutes a breach of the Contract, and MDOT may terminate the Contract under the provisions of Section 17(b).

45. Any and all documents referenced in these Terms and Conditions for Real Estate Services are hereby incorporated by reference and made a part hereof, as if attached hereto.
46. The Contractor will comply with all federal, state, and local laws and ordinances applicable to the work.
47. In case of any discrepancies between the body of the Contract and any exhibits hereto, the body of the Contract will govern. In case of any discrepancy between the Contract and these Terms and Conditions, the Contract will govern.